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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,839	02/11/2004	Ludwig Busam	CM2725MQ	3030

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

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08/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/776,839	Applicant(s) BUSAM ET AL.	
	Examiner Jacqueline F. Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/11/09, 7/23/09, 2/11/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/29/08 have been fully considered but they are not persuasive. Applicant argues there is no teaching or suggestion in Suzuki of an absorbent core having two discontinuous layers of absorbent polymer material that are arranged in such a way that the absorbent polymer material of one layer faces the areas of junction of the other layer. However, the claims do not require the layers to be adjacent or directly face the areas of junction of the other layer. As broadly as claimed the second substrate layer M' faces areas of junction of the first substrate layer M (Figure 17).

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

3. Claims 1-6 and 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki (EP 1 088 537 A2).

Regarding claim 1, Suzuki teaches an absorbent core (M/M') useful for an absorbent article comprising a substrate layer (M), said substrate layer (M) comprising a first surface and a second surface, said absorbent core (M/M') further comprising a discontinuous layer of absorbent material (SAP), said absorbent material (SAP) comprising an absorbent polymer material, said absorbent material comprising an absorbent fibrous material, said discontinuous layer of absorbent material (SAP) comprising a first surface and a second surface, said absorbent core (M/M') further comprising a layer of thermoplastic material (hotmelt), said layer of thermoplastic material (hotmelt) comprising a first surface and a second surface wherein said second surface of said discontinuous layer of absorbent material (SAP) is in at least partial

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contact with said first surface of said substrate layer (M) and wherein portions of said second surface of said layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said substrate layer (M) and portions of said second surface of said layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said discontinuous layer of absorbent material (SAP); wherein said absorbent core (M/M') comprises a second substrate layer (M'), wherein said second substrate layer (M') comprises a first surface and a second surface, said absorbent core (M/M') further comprising a second discontinuous layer of absorbent material (SAP), said second discontinuous layer of absorbent material (SAP) comprising a first surface and a second surface, said absorbent core (SAP) further comprising a second layer of thermoplastic material (hotmelt), said second layer of thermoplastic material (hotmelt) comprising a first surface and a second surface;

wherein said second surface of said second discontinuous layer of absorbent material (SAP) is in at least partial contact with said first surface of said second substrate layer (M') and wherein portions of said second surface of said second layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said second substrate layer (M') and portions of said second surface of said second layer of thermoplastic material (M') are in direct contact with said first surface of said second discontinuous layer of absorbent material (SAP);

2. wherein said first surface of said first substrate layer (M) faces said first surface of said

second substrate layer (M'), wherein said first and second substrate layers (M)(M') do

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not contact each other (abstract; ¶ 0042)(see annotated fig. 17, infra). As broadly as claimed the second substrate layer M' faces areas of junction of the first substrate layer M (Figure 17).

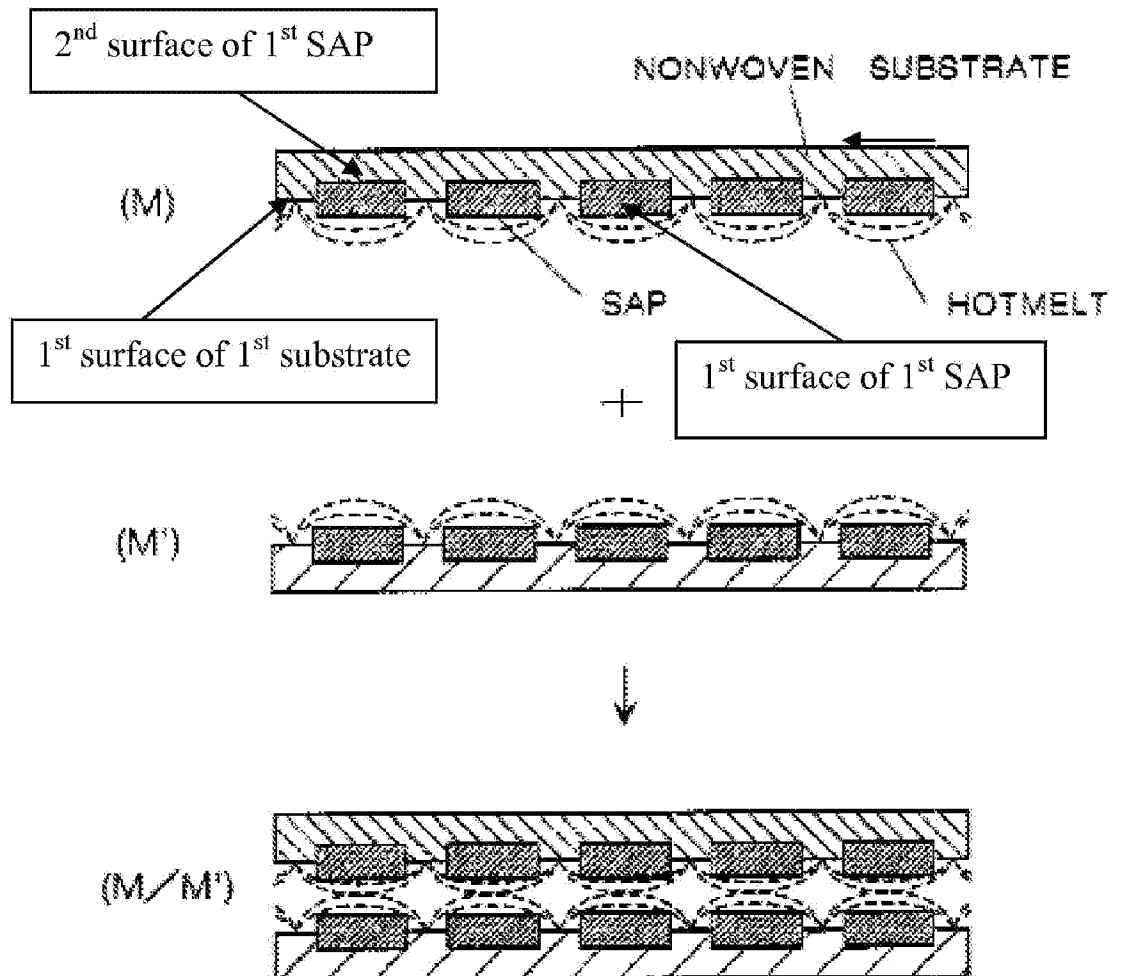


FIG. 17

Suzuki discloses that the SAP may be at least partly in the form of fibers and/or bonded to fine cellulose fibers (§s 0042 & 0043). Also, Suzuki discusses the desirability of maximizing the amount of resin (Id.)

Regarding claims 1, 6, 8 and 10, Suzuki does not expressly disclose the specifically claimed ranges of % of fibrous material, basis weight or performance vectors.

Optimization of ranges of parameters within prior art ranges or through routine experimentation is not sufficient to patentably distinguish the invention over the prior art. MPEP § 2144.05. One of ordinary skill in the art would have recognized that increasing the basis weight of absorbent material would increase the absorbent capacity of the absorbent core, while reducing it would result in less cost or bulkiness. One of ordinary skill in the art would have also recognized that minimizing the strike through time would result in faster absorption of liquid in the finished product. One would also recognize the benefits of maximizing the % of resin relative to fibers. Additionally, one of ordinary skill in the art would have recognized the benefit of optimizing the hydrophilicity of various layers depending on their function as uptake, surge management or retention. Thus these parameters are result-effective variables and as such, it would have been obvious to optimize them.

Regarding claim 2, Suzuki teaches that the thermoplastic material includes a hot melt adhesive (abstract)(fig. 17).

Regarding claims 3 and 4, Suzuki teaches that the thermoplastic material is fiberized and/or net-like (§ 0057).

Regarding claim 5, Suzuki teaches that the absorbent polymer includes particles (¶ 0042).

Regarding claim 9, Suzuki teaches at least one substrate layer and one cover layer (topsheet)(¶ 0032).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761